

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

## DOMINIQUE HENDRIX.

No. 2:21-cv-1062-EFB P

Plaintiff,

## ORDER

J. GOMEZ, et al.,

## Defendants.

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. In addition to filing a complaint (ECF No. 1), he has filed an application to proceed in forma pauperis (ECF No. 8). As discussed below, the court will grant his application to proceed in forma pauperis and screen his complaint.

### Application to Proceed In Forma Pauperis

The court has reviewed plaintiff's application (ECF No. 8) and finds that it makes the showing required by 28 U.S.C. § 1915(a)(1). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

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## Screening

## I. Legal Standards

3       Federal courts must engage in a preliminary screening of cases in which prisoners seek  
4       redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.  
5       § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion  
6       of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which  
7       relief may be granted,” or “seeks monetary relief from a defendant who is immune from such  
8       relief.” *Id.* § 1915A(b).

9 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)  
10 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and  
11 plain statement of the claim showing that the pleader is entitled to relief, in order to give the  
12 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*  
13 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).  
14 While the complaint must comply with the “short and plain statement” requirements of Rule 8,  
15 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556  
16 U.S. 662, 679 (2009).

17 To avoid dismissal for failure to state a claim a complaint must contain more than “naked  
18 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of  
19 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of  
20 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at  
21 678.

22 Furthermore, a claim upon which the court can grant relief must have facial plausibility.  
23 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual  
24 content that allows the court to draw the reasonable inference that the defendant is liable for the  
25 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a  
26 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*  
27 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the  
28 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

1           II.       Analysis

2           Plaintiff's complaint states a potentially viable claim of excessive force against defendant  
3 correctional officer J. Gomez. *See* ECF No. 1 at 3-4 (alleging that defendant Gomez and two  
4 unidentified officers handcuffed plaintiff, attacked him, and repeatedly hit him in the face with  
5 closed fists because plaintiff refused to step out of his cell for a cell search). Although plaintiff  
6 lists officers D. Long and M. Saeturn as additional defendants, he makes no specific allegations  
7 against them in the complaint. The complaint's vague references to "they" are not sufficient.  
8 *See, e.g., id.* at 3.

9           Plaintiff purports to assert a "second claim" asserting that "they're trying to frame me for  
10 something I didn't do . . ." *Id.* at 4. Liberally construed, plaintiff seems to be alleging that the  
11 officers issued a false rules violation report against him for battery on a peace officer. *Id.* So  
12 long as plaintiff received the process he was due during any related rules violation proceedings,  
13 this allegation, without more, is not sufficient to state a claim of constitutional injury under the  
14 Due Process Clause. *See Paul v. Davis*, 424 U.S. 693, 711-12 (1976)

15           Plaintiff's third claim is that his administrative appeals were ignored. ECF No. 1 at 5.  
16 Any failure to properly process or respond to an administrative appeal, however, does not violate  
17 due process, as there are no constitutional requirements regarding how a grievance system is  
18 operated. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003); *Buckley v. Barlow*, 997 F.2d  
19 494, 495 (8th Cir. 1993).

20           For these reasons, plaintiff may either proceed only on the potentially cognizable  
21 excessive force claim against defendant J. Gomez or he may amend his complaint to attempt to  
22 cure the complaint's deficiencies. Plaintiff is not obligated to amend his complaint.

23           Leave to Amend

24           Plaintiff may file an amended complaint to attempt to cure the deficiencies noted above.  
25 Any amended complaint must identify as a defendant only persons who personally participated in  
26 a substantial way in depriving him of a federal constitutional right. *Johnson v. Duffy*, 588 F.2d  
27 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if  
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1 he does an act, participates in another's act or omits to perform an act he is legally required to do  
2 that causes the alleged deprivation). Plaintiff is not obligated to file an amended complaint.

3 Plaintiff may not change the nature of this suit by alleging new, unrelated claims in the  
4 amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

5 Any amended complaint must be written or typed so that it so that it is complete in itself  
6 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended  
7 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the  
8 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114  
9 F.3d 1467, 1474 (9th Cir. 1997) (the ““amended complaint supersedes the original, the latter  
10 being treated thereafter as non-existent.””) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.  
11 1967)).

12 The court cautions plaintiff that failure to comply with the Federal Rules of Civil  
13 Procedure, this court's Local Rules, or any court order may result in this action being dismissed.  
14 *See* E.D. Cal. L.R. 110.

15 Conclusion

16 Accordingly, it is ORDERED that:

- 17 1. Plaintiff's application to proceed in forma pauperis (ECF No. 8) is granted.
- 18 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected  
19 in accordance with the notice to the California Department of Corrections and  
20 Rehabilitation filed concurrently herewith.
- 21 3. Plaintiff's complaint alleges, for screening purposes, a potentially cognizable  
22 excessive force claim against defendant J. Gomez.
- 23 4. All other claims, including those against defendants D. Long and M. Saeturn, are  
24 dismissed with leave to amend within 30 days from the date of service of this  
25 order. Plaintiff is not obligated to amend his complaint.
- 26 5. Within thirty days plaintiff shall return the notice below advising the court whether  
27 he elects to proceed with the cognizable claim or file an amended complaint. If  
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1 the former option is selected and returned, the court will enter an order directing  
2 service at that time.

3 6. Failure to comply with any part of this this order may result in dismissal of this  
4 action.

5 Dated: September 13, 2021.

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7 EDMUND F. BRENNAN  
8 UNITED STATES MAGISTRATE JUDGE  
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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DOMINIQUE HENDRIX,

No. 2:21-cv-1062-EFB P

Plaintiff,

## NOTICE

V.

J. GOMEZ, et al.,

## Defendants.

In accordance with the court's Screening Order, plaintiff hereby elects to:

(1) proceed only with the excessive force claim against defendant Gomez;

OR

(2) delay serving any defendant and file an amended complaint.

Plaintiff

Dated: